STATE OF MICHIGAN

COURT OF APPEALS

KENNETH RAMEY, Personal Representative of the Estate of JODY RAMEY, Deceased, Plaintiff-Appellant, v MICHAEL JUSTUS and TAMARA JUSTUS, Defendants-Appellees.	UNPUBLISHED March 28, 2006 No. 257948 Oakland Circuit Court LC No. 2003-054489-NI

Before: Owens, P.J., and Kelly and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendants' motion for summary disposition. We affirm.

Plaintiff's decedent, a pedestrian wearing dark clothing, was crossing Lapeer Road when a vehicle driven by defendant Tamara Justus struck her.[1] The decedent did not attempt to cross the street at a streetlight or crosswalk. Rather, witnesses testified that she just ran across the road. The location where the accident occurred was not illuminated by streetlights. Defendant testified that she was traveling with family members to a local fast food restaurant with which she was familiar. The decedent was struck on the passenger side of the vehicle, and defendant did not see her until "she was literally right there." Other witnesses to the accident corroborated the testimony that the location was dark, and defendant was not exceeding the speed limit. Plaintiff filed a complaint alleging that defendant was negligent in operating her motor vehicle. Defendant moved for summary disposition, asserting that plaintiff could not satisfy the requirements for a negligence claim. The trial court agreed and granted the motion.

[1] A claim of negligent entrustment was raised against defendant Michael Justus, the alleged owner of the vehicle involved in the accident. However, the trial court held that he was not a proper party because the certificate of title provided that defendant Tamara Justus was the owner of the vehicle. Plaintiff does not challenge the trial court's ruling with regard to this claim on appeal. Accordingly, the singular defendant will refer to Tamara Justus.

Plaintiff alleges that the trial court erred in granting summary disposition because the witnesses changed their testimony, thereby creating a question of fact regarding the circumstances surrounding the accident. We disagree. Appellate review of a summary disposition decision is de novo. *In re Capuzzi Estate*, 470 Mich 399, 402; 684 NW2d 677 (2004). The moving party has the initial burden to support its claim to summary disposition by affidavits, depositions, admissions, or other documentary evidence when the motion is based on MCR 2.116(C)(10). *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). The burden then shifts to the nonmoving party to demonstrate a genuine issue of disputed fact exists for trial. *Id*. To meet this burden, the nonmoving party must present documentary evidence establishing the existence of a material fact, and the motion is properly granted if this burden is not satisfied. *Id*. Affidavits, depositions, and documentary evidence offered in support of, and in opposition to, a dispositive motion shall be considered only to the extent that the content or substance would be admissible as evidence. *Maiden v Rozwood*, 461 Mich 109, 119, 123; 597 NW2d 817 (1999).

"To establish a prima facie case of negligence, a plaintiff must prove four elements: (1) a duty owed by the defendant to the plaintiff, (2) a breach of that duty, (3) causation, and (4) damages." *O'Donnell v Garasic*, 259 Mich App 569, 573; 676 NW2d 213 (2003). A motorist has a duty to operate his automobile using ordinary and reasonable care. *Zarzecki v Hatch*, 347 Mich 138, 141; 79 NW2d 605 (1956). A motor vehicle operator owes a duty to pedestrians to exercise due care that includes following safety rules. *Poe v Detroit*, 179 Mich App 564, 571; 446 NW2d 523 (1989). A driver does not need "to guard against every conceivable result, to take extravagant precautions, to exercise due care" and is "entitled to assume that others using the highway in question would under the circumstances at the time use reasonable care themselves and take proper steps to avoid the risk of injury." *Hale v Cooper*, 271 Mich 348, 354; 261 NW 54 (1935). A person that dashes into the street and strikes the side of a motorist's vehicle does not necessarily present sufficient evidence to proceed to the jury on the question of the motorist's negligence. See *Johnson v Hughes*, 362 Mich 74, 77; 106 NW2d 223 (1960).

Following de novo review of the deposition testimony by defendant and the witnesses to the accident, we conclude that the trial court did not err in granting the defense motion for summary disposition. Defendant was traveling on Lapeer Road in her mini van with her son, niece, and nephew. There was no testimony to indicate that she was distracted or unfamiliar with the area in which the accident occurred. She testified, and other witnesses agreed, that she was complying with the speed limit and other traffic laws. Defendant testified that she was looking straight ahead and did not see the decedent until it was too late. Witnesses corroborated the testimony that the decedent ran in front of the mini van and did not take precautions when crossing this four-lane road. The area of the accident was dimly lit, and the decedent was not wearing reflective or light clothing. Under the circumstances, plaintiff failed to present documentary evidence to establish a factual issue regarding defendant's negligence. *Maiden*, *supra*. There was no indication that defendant breached her duty to exercise reasonable care in the operation of her motor vehicle.

Plaintiff alleges that factual issues exist because the witnesses' deposition testimony varied from the statements given to police following the accident. Specifically, it is alleged that the witnesses favored defendant, pregnant at the time of the accident, over the decedent, an unemployed, uneducated woman on her way to the liquor store. However, there is no indication

that the witnesses had knowledge of the personal circumstances surrounding the decedent. Furthermore, the statements in the police report attributed to the witnesses are hearsay. *Maiden, supra* at 124-125. A question of fact must be demonstrated by admissible, documentary evidence, and plaintiff failed to meet this burden. Additionally, we note that the record does not support plaintiff's allegations that the witnesses changed their statements.[2]

Plaintiff also asserts that the opinion by expert Thomas Bereze creates a question of fact regarding negligence. We disagree. Mere conclusory allegations that are devoid of detail are insufficient to demonstrate that there is a genuine issue of material fact for trial. *Quinto, supra* at 371-372. Bereze did not submit a detailed affidavit delineating his qualifications, his background, and the foundation for his opinion. Rather, he submitted a letter stating that he had reviewed the police report, deposition transcript, statistics involving the vehicle, the motor vehicle code, and the autopsy report. Despite the fact that the information available concluded that the area of the accident was dimly lit, the letter provided that "[t]he area is moderately lit by street and building lights." Without a visit to the scene or photographs to the contrary, it is unclear how Bereze could have reached that conclusion in light of the information he reviewed. Additionally, Bereze concluded that defendant failed to obey the speed laws. Again, it is unclear how he could have arrived at such a conclusion because it was contrary to the information he reviewed. Without any information delineating his qualifications or the foundation for his opinion, the letter, without more, was insufficient to create a genuine issue of material fact regarding any negligence by defendant. *Quinto, supra*. Therefore, the trial court properly granted the defense motion for summary disposition.

Affirmed.

/s/ Donald S. Owens
/s/ Kirsten Frank Kelly
/s/ Karen M. Fort Hood

---

[2] Review of the record presented reveals that the witnesses did not prepare individual statements and present them to the police. Rather, the police report contains *summaries* of police interviews with the witnesses. These interviews are clearly hearsay. Moreover, plaintiff alleges that, in a prepared statement written for police, defendant admitted negligence. Although this information may be admitted as an admission by a party opponent, MRE 801(d)(2), it does not contain an admission of negligence. Defendant did not admit that she saw an individual running in front of her and took no evasive action. Rather, defendant stated that "before [she] knew it there was a person running across the road directly in front of my van [and] before I knew it they [sic] hit my left side [and] windshield." A careful reading of the record does not support plaintiff's position.